U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN 30 2006
CLERK, U.S. DISTRICT COURT
By ______ Deputy

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MICHAEL R. ROEHRS,	§	
Plaintiff,	§	
	§	
v.	§	**NO. 3-05CV-0829M**
	§	
	§	
	§	
CONESYS, INC., et al.,	§	
Defendants.	§	

DEFENDANTS' ORIGINAL ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Defendants Conesys, Inc. ("Conesys"), Ronald E. Spire ("Spire") and J-Tech, Inc. ("J-Tech") (collectively, "Defendants") file the following Original Answer in response to Plaintiff's First Amended Complaint and Demand for Jury Trial:

I. RESPONSES TO SPECIFIC AVERMENTS[1]

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 1.

2. Defendants deny the averments contained in sentence 3 of Paragraph 2 and admit the remaining averments in Paragraph 2.

3. Defendants deny the averments contained in sentence 2 of Paragraph 3 and admit the remaining averments in Paragraph 3.

[1] Footnote 1 of the Complaint recounts the procedural history of this case and announces Plaintiff's intention to appeal the claims dismissed by the Court's December 14, 2005 Order, including but not limited to the claims against Defendants John Pollock and Julie Barker that Plaintiff characterizes as fully resolved by the Court's Order. Accordingly, it is neither necessary nor appropriate for Defendants to "answer" footnote 1. Nevertheless, footnote 1 also states that Plaintiff "incorporates by reference all claims and causes of action plead in his Original Complaint." To the extent Plaintiff actually intends to allege claims and causes of action dismissed by Court Order, or otherwise plead through incorporation by reference of a prior pleading, Defendants deny those allegations.

4. Defendants deny the averments contained in sentence 3 of Paragraph 4 and admit the remaining averments in Paragraph 4.

5. Defendants deny the averments contained in sentence 2 of Paragraph 5 and admit the averments in sentences 1, 3 and 5. Sentence 4 contains no averments but notes Plaintiff's attempt to preserve the dismissal of claims against John Pollock for appeal. Defendants deny that this Court has personal jurisdiction over Pollock or that Plaintiff may bring any claims against Pollock in good faith. Defendants further deny any allegations against Pollock that Plaintiff purports to incorporate by reference.

6. Defendants deny the averments contained in sentence 2 of Paragraph 6 and admit the averments in sentences 1, 3 and 5. Sentence 4 contains no averments but notes Plaintiff's attempt to preserve the dismissal of claims against Julie Barker for appeal. Defendants deny that this Court has personal jurisdiction over Barker or that Plaintiff may bring any claims against Barker in good faith. Defendants further deny any allegations against Barker that Plaintiff purports to incorporate by reference.

7. Defendants admit the averments contained in Paragraph 7.

8. Defendants do not contest venue in this district by deny that Plaintiff's causes of action or a substantial part thereof occurred in this district and deny that any of Plaintiff's causes of action have merit.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in sentences 1 and 3 of Paragraph 9. Defendants admit the averments contained in sentence 2 of Paragraph 9.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 10.

11. Defendants admit the averments contained in the first sentence of Paragraph 11. Defendants admit that at some point in time Spire and FSI discussed the possibility of Conesys forming a business relationship with FSI, but otherwise deny the averments in the second sentence of Paragraph 11. As to the third sentence of Paragraph 11, Defendants admit that Spire authored a memo to the Conesys Board that included a discussion regarding the possibility of acquiring FSI. That document speaks for itself, and Defendants deny Plaintiff's characterization of the document through incomplete quotation.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 12.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 14.

15. Defendants admit that Spire and Pollock and/or Barker had various communications with Daniel Roehrs after February 21, 2001. Defendants deny the remaining averments of Paragraph 15.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 16. Defendants deny the averments contained in sentence 2 of Paragraph 16.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 17.

18. Defendants deny that any restraining order or preliminary injunction against Plaintiff was "improperly obtained," as alleged in the first sentence of Paragraph 18. Defendants

are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 18.

19. Defendants admit that Conesys provided a line of credit to FSI that served as collateral for an injunction bond, but otherwise deny the allegations in the first sentence of Paragraph 19. Defendants admit that Daniel Roehrs sent Neubauer a letter on or about February 22, 2002. That document speaks for itself, and Defendants deny Plaintiff's characterization of the document through incomplete quotation.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 20.

21. Defendants admit that Spire sent Daniel Roehrs an email on or about February 28, 2002. That document speaks for itself, and Defendants deny Plaintiff's characterization of the document through incomplete quotation. Defendants deny the averments contained in sentence 2 of Paragraph 21.

22. Defendants admit that Daniel Roehrs sent a letter to Neubauer, Pollock, Barker and Spire on or about March 1, 2002. The document speaks for itself, and Defendants deny Plaintiff's characterization of the letter through incomplete quotation.

23. Defendants admit that Daniel Roehrs sent a letter to Spire on or about March 6, 2002. The document speaks for itself, and Defendants deny Plaintiff's characterization of the letter through incomplete quotation.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 24.

25. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 25.

26. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 26.

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 27.

28. Defendants admit that Daniel Roehrs sent an email to Spire on or about March 26, 2002. The document speaks for itself, and Defendants deny Plaintiff's characterization of the letter through incomplete quotation.

29. Defendants deny the averments contained in Paragraph 29.

30. Defendants deny that Plaintiff's shares were "illegally cancelled" as alleged in sentence 3 of Paragraph 30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 30.

31. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 31.

32. Defendants admit the first two sentences of Paragraph 32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in sentences 3 and 4 of Paragraph 32.

33. Defendants deny that Conesys "improperly maintain[ed] control of [Plaintiff's] shares," as alleged in sentence 3 of Paragraph 33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 33.

34. Defendants deny the averments contained in Paragraph 34.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 35.

36. Defendants admit that various representatives of Conesys were in communication with various FSI representatives at various times in 2001 and 2002, but deny that the communications were "near constant" and deny Plaintiff's characterization of those communications. Defendants admit that Daniel Roehrs visited with Conesys representatives in 2002. Defendants admit that Spire sent an email to Conesys France in October 2002. The document speaks for itself, and Defendants deny Plaintiff's characterization of the letter through incomplete quotation. Defendants deny the remaining allegations of Paragraph 36.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 37.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 38.

39. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 39.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 40.

41. Defendants admit that Plaintiff and the "Minority Group" executed an SPA. Defendants deny the remaining averments of Paragraph 41, which attempt to characterize a complex agreement that speaks for itself.

42. Defendants deny the averments contained in Paragraph 42.

43. Defendants deny the averments contained in Paragraph 43.

44. Defendants deny the averments contained in Paragraph 44.

45. Defendants deny the averments contained in Paragraph 45.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 46 but deny that Defendants in any way interfered with Plaintiff's alleged investment relationship with SMI.

47. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in sentences 1 and 3 of Paragraph 47 but deny the averments contained in sentence 2. Defendants further deny that Defendants in any way interfered with Plaintiff's alleged investment relationship with Amphenol.

48. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 48 but deny that Defendants in any way interfered with Plaintiff's alleged investment relationship with Beta Capital.

49. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 49 but deny that Defendants in any way interfered with Plaintiff's alleged investment relationship with Stran Technology.

50. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 50 but deny that Defendants in any way interfered with Plaintiff's alleged investment relationship with Pacesetter Capital.

51. Defendants deny the averments contained in Paragraph 51.

52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 52.

53. Defendants deny the averments contained in Paragraph 53.

54. Defendants deny the averments contained in Paragraph 54.

55. Defendants deny the averments contained in Paragraph 55.

56. Paragraph 56 contains no averments but incorporates other averments by reference. Accordingly, Defendants incorporate by reference each corresponding response set forth above.

57. Defendants deny the averments contained in Paragraph 57 and further deny that any alleged relationship between Plaintiff and FSI and/or the Minority Group will support a cause of action for tortious interference with contract and/or business relationship.

58. Defendants deny the averments contained in Paragraph 58.

59. Defendants deny the averments contained in Paragraph 59.

60. Paragraph 60 contains no averments but incorporates other averments by reference. Accordingly, Defendants incorporate by reference each corresponding response set forth above.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 61.

62. Defendants deny the averments contained in Paragraph 62.

63. Defendants deny the averments contained in Paragraph 63.

64. Defendants deny the averments contained in Paragraph 64.

65. Paragraph 65 contains no averments but incorporates other averments by reference. Accordingly, Defendants incorporate by reference each corresponding response set forth above.

66. Defendants deny the averments contained in Paragraph 66.

67. Defendants deny the averments contained in Paragraph 67.

68. Defendants deny the averments contained in Paragraph 68.

69. Defendants deny the averments contained in Paragraph 69.

70. Paragraph 70 contains no averments but incorporates other averments by reference. Accordingly, Defendants incorporate by reference each corresponding response set forth above.

71. Defendants deny the averments contained in Paragraph 71.

72. Defendants deny the averments contained in Paragraph 72.

73. Defendants deny the averments contained in Paragraph 73.

74. Defendants deny the averments contained in Paragraph 74.

75. Defendants deny the averments contained in Paragraph 75.

76. Defendants deny the averments contained in Paragraph 76.

77. Defendants deny the averments contained in Paragraph 77.

78. Defendants deny the averments contained in Paragraph 78.

79. Defendants admit that Plaintiff demands a trial by jury in Paragraph 79.

80. Defendants deny that Plaintiff is entitled to any of the relief sought in his Prayer for Relief.

81. Defendants deny each and every averment in the Complaint except those averments or paragraphs that are expressly and specifically admitted in this Answer.

II. AFFIRMATIVE AND SPECIAL DEFENSES

82. Plaintiff did not incur any damage or harm due to any purported acts or omissions of Defendants.

83. In the alternative, any damage or harm allegedly incurred by Plaintiff is attributable to causes other than any purported acts or omissions of Defendants.

84. In the alternative, the acts or omissions of Plaintiff, Plaintiff's agents, representatives, employees and/or other persons acting on behalf of Plaintiff were the proximate

cause and the superseding, intervening, and/or independent cause of any alleged injury or damage sustained by Plaintiff.

85. Plaintiff's causes of action are barred, in whole or in part, because the loss or damages, if any, were caused by the contributory, comparative or proportionate negligence or fault of Plaintiff and/or the comparative or proportionate fault of other persons or defendants. To that end, Defendants invoke on their behalf to the fullest extent allowed by law all applicable doctrines of proportionate responsibility, comparative responsibility, comparative negligence or contributory negligence. Defendants plead such doctrines as defenses, as bars to Plaintiff's claims, and as requests for defensive relief by way of credits or offsets or bars to any recovery sought by or awarded to Plaintiff.

86. Daniel Roehrs, Ardella Simacek, Tom Hazelton, Mike Flower, Kieran McGrath and Rick Hobbs, as members of the so-called Minority Group, and FSI are partially or wholly responsible for any loss or damages sought by Plaintiff as responsible third parties under TEX. CIV. PRAC. & REM. CODE § 33.001, et seq.

87. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

88. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, laches and/or waiver.

89. Plaintiff's claims are barred, in whole or in part, by the doctrines of collateral estoppel and/or res judicata.

90. Plaintiff's claims are barred, in whole or in part, due to Plaintiff's lack of standing to prosecute those claims.

91. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate damages.

92. Plaintiff's claims are barred, in whole or in part, by the judicial communications privilege or immunity.

93. Plaintiff's claims are barred, in whole or in part, because Defendants' actions were legally justified and/or privileged.

94. Plaintiff's claims are barred, in whole or in part, for failure to state a claim upon which relief may be granted.

95. Defendants affirmatively plead that the legal standard used in Texas to determine whether exemplary damages should be awarded, and the method used to determine the amount of exemplary damages, are unconstitutional for the following reasons:

a) The legal standard used to determine whether exemplary damages may be awarded is so vague, arbitrary and indefinite that it constitutes both a denial of Defendants' right to equal protection of the laws and a denial of its due process rights in violation of the 14th Amendment to the United States Constitution and Article I, §§ 3 and 19, of the Texas Constitution.

b) The method by which the amount of exemplary damages is determined subjects Defendants to excessive fines in violation of the 8th and 14th Amendments to the United States Constitution and Article I, § 13, of the Texas Constitution.

WHEREFORE, Defendants Conesys, Inc., Ronald E. Spire and J-Tech, Inc. pray that Plaintiff take nothing by these causes of action, that Defendants recover their costs of court, including attorneys' fees, and for all other relief as to which they may be justly entitled.

Respectfully submitted,

Paul M. Koning
Texas Bar No. 11671300
Stacie H. Tandy
Texas Bar No. 24042003

of HUGHES & LUCE LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201
214-939-5500
214-939-5849 – fax

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was delivered to all attorneys of record in accordance with the Federal Rules of Civil Procedure on the 30th day of January, 2006.